

11 ERIC BENEDICT, RICHARD BOWDERS,
12 KILRICANOS VIEIRA, and DAVID
13 MUSTAIN, on behalf of themselves and
14 classes of those similarly situated,

15 Plaintiffs,

16 v.

17 HEWLETT-PACKARD COMPANY,
18 Defendant.

19 ERIC BENEDICT,

20 Counterdefendant,

21 v.

22 HEWLETT-PACKARD COMPANY,
23 Counterclaimant.

24 Case No. 13-cv-00119-BLF

25 **SEALING ORDER**

26 [Re: ECF Nos. 405, 412, 420, 427]

27 Before the Court are four motions seeking leave to file under seal various documents in
28 this litigation pursuant to Civil Local Rule 79-5. Plaintiff and Counterdefendant Eric Benedict
moves to seal portions of two exhibits to a declaration in support of his Motion for Summary

1 Judgment to the First Amended Counterclaim filed by Defendant and Counterclaimant Hewlett-
2 Packard Company (“HP”). *See* (ECF No. 405). HP moves to seal a total of seventy-six
3 documents, either in whole or in part, consisting of its Motion for Summary Judgment, Motion to
4 Decertify the FLSA Collective Action, and various exhibits, declarations, and depositions
5 submitted in support of those Motions and in support of its Opposition to Benedict’s Motion for
6 Summary Judgment. *See* (ECF Nos. 412, 420, 427).

7 The Court has carefully reviewed each and every one of the documents requested for
8 sealing and has considered the relevant law and declarations submitted thereto. For the reasons
9 that follow, the Court GRANTS Benedict’s sealing motion filed under ECF No. 405; GRANTS
10 HP’s sealing motion filed under ECF No. 412; GRANTS IN PART and DENIES IN PART HP’s
11 sealing motion filed under ECF No. 420; and GRANTS HP’s sealing motion filed under ECF No.
12 427.

13 I. LEGAL STANDARD

14 Courts recognize a “general right to inspect and copy public records and documents,
15 including judicial records and documents.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597
16 & n.7 (1978); *see also Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir.
17 2006). “Unless a particular court record is one ‘traditionally kept secret,’ a ‘strong presumption in
18 favor of access’ is the starting point.” *Kamakana*, 447 F.3d at 1178 (quoting *Foltz v. State Farm*
19 *Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)).

20 A party “seeking to seal judicial records can overcome the strong presumption of access by
21 providing ‘sufficiently compelling reasons’ that override the public policies favoring disclosure.”
22 *In re Midland Nat. Life Ins. Co. Annuity Sales Practices Litig.*, 686 F.3d 1115, 1119 (9th Cir.
23 2012). “In general, ‘compelling reasons’ . . . exist when such ‘court files might have become a
24 vehicle for improper purposes,’ such as the use of records to gratify private spite, promote public
25 scandal, circulate libelous statements, or release trade secrets.” *Kamakana*, 447 F.3d at 1179
26 (citing *Nixon*, 435 U.S. at 598). “The mere fact that the production of records may lead to a
27 litigant’s embarrassment, incrimination, or exposure to further litigation will not, without more,
28 compel the court to seal its records.” *Id.* (citing *Foltz*, 331 F.3d at 1136).

1 However, the Ninth Circuit has “carved out an exception to the presumption of access to
2 judicial records . . . [that is] expressly limited to judicial records filed under seal when attached to
3 a *non-dispositive* motion.” *In re Midland*, 686 F.3d at 1119 (internal quotation marks and citation
4 omitted). A party seeking to file documents under seal in relation to a non-dispositive motion
5 must sh`ow only “good cause” for the sealing request. *See Phillips ex rel. Estates of Byrd v. Gen.*
6 *Motors Corp.*, 307 F.3d 1206, 1213 (9th Cir. 2002); *Pintos v. Pac. Creditors Ass ’n*, 605 F.3d 665,
7 678 (9th Cir. 2010) (applying a “good cause” standard to all non-dispositive motions because such
8 motions “are often unrelated, or only tangentially related, to the underlying cause of action”).
9 Good cause may exist to seal documents that are “privileged, contain trade secrets, contain
10 confidential research, development or commercial information, or if disclosure of the information
11 might harm a litigant’s competitive standing.” *Dugan*, 2013 WL 1435223, at *2.

12 Motions to decertify FLSA collective actions are non-dispositive motions to which the
13 “good cause” standard applies. *See Brewer v. Gen. Nutrition Corp.*, No. 11-cv-3587, 2014 WL
14 5873328, at *1 (N.D. Cal. Nov. 12, 2014); *see also Dugan v. Lloyds TSB Bank, PLC*, No. 12-CV-
15 02549-WHA NJV, 2013 WL 1435223, at *1 (N.D. Cal. Apr. 9, 2013) (“[T]he vast majority of
16 courts within this circuit treat motions for class certification as non-dispositive motions to which
17 the ‘good cause’ standard applies.”); *In re High-Tech Employee Antitrust Litig.*, No. 11-CV-
18 02509-LHK, 2013 WL 163779, at *2 n.1 (compiling cases and, though recognizing that “there
19 may be circumstances in which a motion for class certification is case dispositive,” stating that
20 “the Court applies a ‘good cause’ standard here in accordance with the vast majority of other
21 courts within this circuit”).

22 In this District, a party seeking to seal judicial records must follow Civil Local Rule 79-5,
23 which requires, *inter alia*, that a sealing request be “narrowly tailored to seek sealing only of
24 sealable material.” Civ. L.R. 79-5(b). The submitting party must make a “particularized showing
25 of ‘good cause’” for each individual document it seeks to seal. *See Kamakana*, 447 F.3d 1172,
26 1180. “[B]road allegations of harm, unsubstantiated by specific examples or articulated
27 reasoning,” are insufficient. *In re High-Tech Employee Antitrust Litig.*, 2013 WL 163779, at *2
28 (*citing Beckman Indus. Inc. v. Int’l Ins. Co.*, 996 F.2d 470, 476 (9th Cir. 1992)).

II. DISCUSSION

With these standards in mind, the Court addresses the sealing motions at bar, first, with Benedict's sealing request (hereafter referred to by docket number, "ECF No. 405"), and then with HP's sealing requests with respect to its Motion to Decertify the FLSA Collective Action (hereinafter "ECF No. 412"), its Opposition to Benedict's Motion for Summary Judgment (hereinafter "ECF No. 420"), and finally its Motion for Summary Judgment (hereinafter "ECF No. 427"). The Court has reviewed all of the documents sought to be sealed and, having considered the relevant law and declarations submitted thereto, makes the following rulings.

A. ECF No. 405

Benedict requests leave from the Court to file under seal portions of two documents in connection with his Motion for Summary Judgment to HP's First Amended Counterclaim. *See* (ECF No. 401). The first document, appended as "Exhibit A" to the Declaration of Jahan C. Sagafi in support of the Motion, (ECF No. 403), is a letter detailing terms of HP's offer of employment to Benedict, and seeks to redact only Benedict's personal contact information, salary offer, and personal account access information. "Exhibit B" of the same Declaration is an email correspondence between Benedict and HP, and seeks to redact only email addresses of the respective parties. Counsel for Benedict, Mr. Daniel M. Hutchinson, attested in his declaration in support of the Motion that HP does not oppose the sealing of the identified information. Benedict submits that this information sought for redaction, narrowly tailored, should be sealed because it "is sensitive and confidential, and immaterial to Plaintiff's Motion for Summary Judgment." (ECF No. 405) at 1.

The Court agrees, and finds that Benedict has identified interests sufficient to meet the "compelling reasons" standard for sealing in dispositive motions. The information requested for sealing is narrowly-tailored, and relates to personal, identifiable information that has no bearing on the substance of the claims at issue in HP's First Amended Counterclaim, which alleges breach of contract claims stemming from Benedict's purported violation of confidentiality agreements. The public interests in favor of access to this information are therefore minimal, and the interests to override the general policy in favor of disclosure are great. As such, ECF No. 405 is hereby

1 GRANTED.

2 **B. ECF No. 412**

3 Next, HP requests leave to file under seal forty documents, some in whole and some in
4 part, related to its Motion to Decertify the FLSA Collective Action. *See* (ECF No. 413). The
5 request includes redacting portions of its Motion identifying employee salaries and HP's
6 confidential business information. In addition, the documents identified for filing under seal also
7 include portions of thirteen depositions and various exhibits attached to them, as well as employee
8 performance evaluations spanning the course of several years. HP submits that these various
9 documents contain HP's confidential and proprietary business information, employees' personal
10 information such as performance reviews and salary information, and information identifying
11 HP's customers, customer contacts, and the particular services it provides for them. (ECF No.
12 412) at 2.

13 In support of this administrative motion, HP submits a declaration from Mr. Michael
14 Menz, the company's Senior Manager of Global Security Investigations and Forensics, who
15 represents that the aforementioned information is "highly commercially sensitive, confidential,
16 and/or proprietary and [are] trade secret[s]," and "information about its employees, such as private
17 salary information and performance reviews." (ECF No. 412-1) ¶¶ 5, 6. Menz further represents
18 that the company maintains policies and protocols to preserve the integrity of its confidential
19 business information and takes reasonable steps to limit the disclosure of employee information,
20 "in the normal course of business." *Id.* ¶¶ 4, 6.

21 Under the good cause standard for this non-dispositive motion, the Court finds that HP has
22 articulated particularized reasons sufficient to warrant sealing the requested documents, or
23 portions thereof. The Court has reviewed all of the exhibits requested for sealing, and observes
24 that the information ECF No. 412 seeks to keep from disclosure to the public include trade secrets
25 and confidential business information that, if disclosed, may harm HP's competitive standing and
26 its employees. Accordingly, the Court finds that HP has shown good cause to seal the requested
27 documents and therefore GRANTS ECF No. 412.

1 **C. ECF No. 420**

2 In ECF No. 420, HP requests leave from the Court to file under seal nine documents
3 related to its Opposition to Benedict's Motion for Summary Judgment of HP's First Amended
4 Counterclaim. HP submits that this administrative motion "seeks to redact only limited instances
5 of information consisting of: (a) HP's confidential and proprietary business information; and (b)
6 information identifying HP's customer's customer contacts, the particular services it provides for
7 them, and its customers' confidential and proprietary business information." (ECF No. 420) at 2,
8 5.

9 However, the Court is puzzled by this representation because, far from "limited instances
10 of information," ECF No. 420 seeks to *seal all nine documents in their entirety* such that, with the
11 exception of Exhibit 9, broadly sweeps together what appears to be both sealable and substantial
12 non-sealable information. Specifically, the Court notes that Exhibits 1 through 4 are identical to
13 Exhibits A and B in Benedict's ECF No. 405, *supra*, for which Benedict has merely sought to
14 redact limited portions of the two documents, and not seal the entirety of the Exhibits, as HP seeks
15 to do here. In addition, HP's ECF No. 420 also requests leave to seal the entirety of Exhibit 5, a
16 104-page deposition transcript, without regard to what portions of the transcript may include non-
17 sealable information. Exhibits 6 and 8 are declarations of counsel for HP, but HP fails to
18 articulate any compelling reason for why these Exhibits should be screened from disclosure in
19 their entirety. Finally, the Court observes that Exhibit 7 appears to contain substantial proprietary
20 business information, but again, HP fails to differentiate between sealable and non-sealable
21 information in its administrative request for this Exhibit. HP provides little guidance to the Court
22 what compelling reasons would justify sealing the entirety of these aforementioned eight Exhibits,
23 and it is not the responsibility of the Court to narrowly tailor the sealing requests on HP's behalf to
24 comply with this District's Civil Local Rules.

25 The only exhibit the Court finds appropriate for sealing in full is Exhibit 9, which is an
26 internal company document that specifies in sharp detail the classification and responsibilities of
27 several of HP's employee positions. It also includes information to a high degree of specificity of
28 HP's company structure. After careful review, the Court concludes that Exhibit 9 is sealable in its

1 entirety, based on this Exhibit's collection of confidential and proprietary business information.

2 For these reasons, ECF No. 420 is GRANTED as to Exhibit 9, but DENIED as to Exhibits
3 through 8 for failure to comply with Civil Local Rule 79-5, which requires that requests to seal
4 be narrowly tailored. Should HP choose to do so, no later than ten days from the date of this
5 Order, it may resubmit narrowly-tailored versions of Exhibits 1 through 8 which shall specify
6 which, if any, of these exhibits—and what specific portions thereof—must be sealed, along with
7 the compelling reason or reasons in support of each.

8 **D. ECF No. 427**

9 Finally, in ECF No. 427, HP seeks leave to file under seal twenty-seven documents related
10 to its Motion for Summary Judgment. HP submits that this Motion seeks to redact only limited
11 instances of information consisting of the company's confidential and proprietary business
12 information, and information identifying HP's customers, customer contacts, the particular
13 services it provides for them, and its customers' confidential and proprietary business information.
14 (ECF No. 427) at 2, 5. In his declaration, Mr. Menz attests that HP, in the normal course of
15 business, treats this information as confidential, and takes reasonable steps to limit the disclosure
16 of it. (ECF No. 427-1) ¶¶ 3–6. Moreover, Mr. David Wong, the company's Ethics Training and
17 Engagement Manager, explained that HP takes measures to limit access to this information, which
18 includes "non-public, commercial valuable, confidential and proprietary technology and trade
19 secret information." (ECF No. 427-2) ¶¶ 2–4, 12.

20 The Court finds that the redactions proposed in HP's Motion for Summary Judgment, in
21 the declarations of Peter Halton, Steve Ray, and Joe Luminoso in support of the Motion for
22 Summary Judgment, and in the portions identified in Exhibits A–J, L–O, and P–W, are sealable
23 because they contain confidential and private information about HP's business strategy and trade
24 secrets, including internal operations information, product and services lines, customer and
25 account information, and internal company structure and employee information. Accordingly,
26 HP's request for leave to file under seal in ECF No. 427 is GRANTED.

III. ORDER

For the foregoing reasons, IT IS HEREBY ORDERED as follows:

- (1) The Court GRANTS the requests to file under seal the documents, or portions thereof, listed in the following table.

Motion to Seal Exhibit Letters for Reference	Items HP May File Under Seal
ECF No. 405	
Exhibit A	Portions of Exhibit A to the Declaration of Jahan Sagafi
Exhibit B	Portions of Exhibit B to the Declaration of Jahan Sagafi
ECF No. 420	
	Defendant Hewlett Packard Company's Motion to Decertify FLSA Collective Action
Exhibit 1	Excerpts from the deposition of Michelle Albert
Exhibit 4	Excerpts from the deposition of George Davis
Exhibit 5	Excerpts from the deposition of Eric Benedict and excerpts from Exhibit 12 attached thereto
Exhibit 8	Excerpts from the deposition of Andrew Kennedy
Exhibit 10	Excerpts from the deposition of Ken Shropshire
Exhibit 11	Excerpts from the deposition of David Mustain
Exhibit 13	Exhibit 7 from the deposition of Whitney Ihling
Exhibit 15	Excerpts from the deposition of Jennifer Chia-Chen Chang
Exhibit 16	Excerpts from the deposition of Brian Jessen
Exhibit 17	Excerpts from the deposition of Howard Greenspan
Exhibit 18	Excerpts from Exhibit 6 from the deposition of Howard Greenspan
Exhibit 19	Excerpts from Exhibit 7 from the deposition of Howard Greenspan
Exhibit 20	Excerpts from Exhibit 8 from the deposition of Howard Greenspan

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1	Exhibit 21	Excerpts from the deposition of Chad Austin
2	Exhibit 23	Excerpts from the deposition of Kilricanos Vieira
3	Exhibit 24	Excerpts from the deposition of Donald Ford
4	Exhibit 26	Excerpts from Exhibit 37-A from the deposition of David Mustain
5	Exhibit 27	Excerpts from Exhibit 6 from the deposition of Kilricanos Vieira
6	Exhibit 28	Exhibit 42 from the deposition of David Mustain
7	Exhibit 30	Exhibit 4 from the deposition of Anthony Kennedy
8	Exhibit 31	Exhibit 5 from the deposition of Anthony Kennedy
9	Exhibit 32	Excerpts from the deposition of John Reese
10	Exhibit 33	Exhibit 5 from the deposition of John Reese
11	Exhibit 34	Exhibit 6 from the deposition of John Reese
12	Exhibit 35	Exhibit 7 from the deposition of John Reese
13	Exhibit 37	Exhibit 16 from the deposition of Brian Jessen
14	Exhibit 38	Excerpts from Exhibit 19 from the deposition of Brian Jessen
15	Exhibit 39	Exhibit 22 from the deposition of Brian Jessen
16	Exhibit 40	Excerpts from Exhibit 5 from the deposition of Jennifer Chang
17	Exhibit 41	Exhibit 4 from the deposition of Adam O'Toole
18	Exhibit 43	2010 Performance Review maintained for Ann Holiday
19	Exhibit 44	2011 Performance Review maintained for Ann Holiday
20	Exhibit 44	2010 Performance Review maintained for Ann Holiday
21	Exhibit 45	FY14 Year-End Performance Review for Janet Aman
22	Exhibit 46	FY15 Accelerated Performance Review for Janet Aman
23	Exhibit 47	Document titled, "Janet Aman, Accomplishments for Q1 & Q2 FY15"
24	Exhibit 48	FY2014 Year-End Performance Review for Thomas Chan
25	Exhibit 49	2012 Performance Review for Al Ericson

1	Exhibit 50	FY2014 Year-End Performance Review for Larry Fry
2	Exhibit 52	Excerpts from the Declaration of Teresa Rowe
3	ECF No. 420	
4	Exhibit 9	Exhibit L to the Max Fischer Declaration
5	ECF No. 427	
6		Defendant Hewlett-Packard Company's Motion for Summary Judgment Against Plaintiffs David Mustain and Eric Benedict
7		
8	Exhibit A	Transcript excerpts from David Mustain's deposition held on June 8, 2015
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10	Exhibit B	Excerpts of Exhibit 2 of David Mustain's deposition
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12	Exhibit C	Exhibit 7 of David Mustain's deposition
13		
14	Exhibit D	Excerpts of Exhibit 10 of David Mustain's deposition
15		
16	Exhibit E	Excerpts of Exhibit 13 of David Mustain's deposition
17		
18	Exhibit F	Excerpts of Exhibit 14 of David Mustain's deposition
19		
20	Exhibit G	Excerpts of Exhibit 15 of David Mustain's deposition
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22	Exhibit H	Excerpts of Exhibit 17 of David Mustain's deposition
23		
24	Exhibit I	Excerpts of Exhibit 18 of David Mustain's deposition
25		
26	Exhibit J	Excerpts of Exhibit 22 of David Mustain's deposition
27		
28	Exhibit L	Excerpts of Exhibit 25-A of David Mustain's deposition
21	Exhibit M	Excerpts of Exhibit 26 of David Mustain's deposition
22		
23	Exhibit N	Exhibit 41 to David Mustain's deposition
24		
25	Exhibit O	Exhibit 42 to David Mustain's deposition
26		
27	Exhibit P	Exhibit 46 of David Mustain's deposition
28		
25	Exhibit Q	Transcript excerpts from Eric Benedict's deposition held on December 5, 2013
26		
27	Exhibit R	Transcript excerpts from Eric Benedict's deposition held on May 20, 2016
28		

1	Exhibit S	Exhibit 8 of Eric Benedict's deposition
2	Exhibit T	Excerpts of Exhibit 11 of Eric Benedict's deposition
3	Exhibit U	Excerpts of Exhibit 13 of Eric Benedict's deposition
4	Exhibit V	Excerpts of Exhibit 37 of Eric Benedict's deposition
5	Exhibit W	Excerpts of Exhibit 50 of Eric Benedict's deposition
6		Excerpts of the Declaration of Wayne Gorden in Support of Defendant Hewlett-Packard Company's Motion for Summary Judgment Against David Mustain and Eric Benedict
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8		Excerpts of the Declaration of Peter Halton in Support of Defendant Hewlett-Packard Company's Motion for Summary Judgment Against David Mustain and Eric Benedict
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10		Excerpts of the Declaration of Steve Ray in Support of Defendant Hewlett-Packard Company's Motion for Summary Judgment Against David Mustain and Eric Benedict
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12		Excerpts of the Declaration of Joe Luminoso in Support of Defendant Hewlett-Packard Company's Motion for Summary Judgment Against David Mustain and Eric Benedict
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(2) The Court DENIES HP's request to file under seal the documents, or portions thereof, listed in the following table. HP is given leave to re-file, no later than ten (10) days from the date of this Order, narrowly-tailored versions of the following documents, which shall identify what specific portions thereof must be sealed, along with the compelling reason or reasons in support of each.

Motion to Seal Exhibit Letters for Reference	Items HP May File Not Under Seal
ECF No. 420	
Exhibit 1	Exhibit A to the Ans Gregory Declaration
Exhibit 2	Exhibit B to the Ans Gregory Declaration
Exhibit 3	Exhibit A to the Max Fischer Declaration

1	Exhibit 4	Exhibit B to the Max Fischer Declaration
2	Exhibit 5	Exhibit C to the Max Fischer Declaration
3	Exhibit 6	Don Billings Declaration
4	Exhibit 7	Exhibit B to the Lazerson Declaration
5	Exhibit 8	David Carpenter Declaration
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7 **IT IS SO ORDERED.**

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9 Dated: July 1, 2016

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11 BETH LABSON FREEMAN
12 United States District Judge

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